

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: TOBACCO LITIGATION                      Civil Action  
(MEDICAL MONITORING CASES)                      No. 00-C-6000

DEPOSITION OF TIMOTHY P. MEYER, Ph.D.  
Washington, D.C.  
Friday, September 15, 2000

REPORTED BY:  
LEE A. BURSTEN, R.P.R.  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

Deposition of TIMOTHY P. MEYER, Ph.D.,  
called for examination pursuant to notice of  
deposition, on Friday, September 15, 2000, in  
Washington, D.C., at the offices of Dechert Price &  
Rhoads, 1775 Eye Street, N.W., at 10:10 a.m., before  
LEE A. BURSTEN, a Notary Public in and for the  
District of Columbia, when were present on behalf of  
the respective parties:

FREDERICK C. BAKER, ESQ.  
Ness, Motley, Loadholt, Richardson & Poole  
28 Bridgeside Boulevard  
Mount Pleasant, South Carolina 29465  
843-216-9000  
On behalf of Plaintiffs

JOHN DASCOLI, ESQ. (via telephone)  
MICHAEL DAVENPORT, ESQ. (via telephone)  
The Segal Law Firm  
810 East Kanawha Boulevard  
Charleston, West Virginia 25301  
304-344-9100  
On behalf of Plaintiffs

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STEPHEN J. McCONNELL, ESQ.  
SAMUEL E. KLEIN, ESQ.  
Dechert Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, Pennsylvania 19103-2793  
215-994-4000  
On behalf of Defendant Philip Morris

9  
10 JULIA J. TYLER, ESQ.  
11 Johnson, Tyler & Purvis, P.C.  
12 11 Dupont Circle, N.W.  
13 Suite 300  
14 Washington, D.C. 20036  
15 202-667-6100  
16 On behalf of Defendant Philip Morris  
17  
18 JOHN McHUGH, ESQ. (via telephone)  
19 Allen Guthrie & McHugh  
20 1300 Bank One Center  
21 Charleston, West Virginia 25333-3394  
22 304-345-7250  
23 On behalf of Defendant Philip Morris  
24  
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4

1 MARY-JO MIDDELHOFF, ESQ. (via telephone)  
2 Dinsmore & Shohl  
3 1900 Chemed Center  
4 225 East Fifth Street  
5 Cincinnati, Ohio 45202  
6 513-977-8266  
7 On behalf of Defendant Brown & Williamson  
8  
9 LYNN FRYE, ESQ. (via telephone)  
10 Jackson & Kelly PLLC  
11 1600 Laidley Tower  
12 Charleston, West Virginia 25322-0553  
13 304-340-1000  
14 On behalf of Defendant Brown & Williamson  
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1 P R O C E E D I N G S  
2 MR. BAKER: Before we get started, let's  
3 go around one more time for appearances. This is  
4 Fred Baker for the plaintiffs.  
5 MR. McCONNELL: I'm Steve McConnell of  
6 Dechert, representing defendant Philip Morris.  
7 MS. TYLER: Julia Tyler, Johnson, Tyler &  
8 Purvis, representing Philip Morris.  
9 MR. KLEIN: Sam Klein, Dechert,  
10 representing Philip Morris.  
11 MR. McHUGH: (via telephone) John McHugh,  
12 Allen Guthrie here in Charleston, also for Philip  
13 Morris.  
14 MS. MIDDELHOFF: (via telephone) Mary-Jo  
15 Middelhoff from Dinsmore & Shohl in Cincinnati, for  
16 Brown & Williamson.  
17 MS. FRYE: (via telephone) Lynn Frye,

18 Jackson & Kelly, Charleston, West Virginia, also for  
19 Brown & Williamson.  
20 Whereupon,  
21 TIMOTHY P. MEYER, Ph.D.  
22 was called as a witness and, having first been duly  
23 sworn, was examined and testified as follows:  
24 EXAMINATION  
25 BY MR. BAKER:

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6

1 Q Good morning, Dr. Meyer. My name is Fred  
2 Baker. As you just heard, I'm counsel for the  
3 plaintiffs in the West Virginia medical monitoring  
4 cases. I'll be taking your deposition today.  
5 A few ground rules or introductory  
6 remarks. First of all, if you feel it's necessary  
7 to ask for clarifications, definition, explanations  
8 of any words, questions about documents, please ask  
9 me. I'll be happy to try to explain them or answer  
10 your question and clarify it.  
11 Secondly, if I ask a yes or no question, I  
12 would appreciate it if you would try to answer the  
13 question yes or no. If you believe there's  
14 additional information that needs to be given to  
15 clarify or explain it, feel free to do so after you  
16 give me your initial answer.  
17 Third, please let me know at any time if  
18 you want to take a break. We'll finish up the  
19 question on the floor and then take a break.  
20 MR. BAKER: And finally, I would like to  
21 remind all counsel that objections shall be stated  
22 concisely and in a nonargumentative and  
23 nonsuggestive manner, stating the basis of the  
24 objection and nothing more.  
25 BY MR. BAKER:

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7

1 Q Please state your name and address.  
2 MR. KLEIN: We'll reserve all objections  
3 except as to the form of the question, reserved  
4 until the time of trial.  
5 MR. BAKER: Let's start out making all the  
6 objections, and then we'll --  
7 MR. KLEIN: Okay. Including relevance  
8 objections?  
9 MR. BAKER: On second thought, let's  
10 reserve them. It will be a very long deposition  
11 otherwise.  
12 MR. KLEIN: I thought perhaps you'd change  
13 your mind.  
14 BY MR. BAKER:  
15 Q Please state your name for the record,  
16 Dr. Meyer.  
17 A Timothy P. Meyer.  
18 Q And your address?  
19 A It is the University of Wisconsin, Green  
20 Bay, 2420 Nicolet Drive, Green Bay, Wisconsin,  
21 54302.  
22 Q Dr. Meyer, have you ever been deposed  
23 before?  
24 A Yes, I have.  
25 Q Would you please identify the approximate  
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1 date and the name and the nature of the action or  
2 actions.

3 A Yes. I was deposed in the Arch Barnes  
4 class action case, and I believe that was 1998. And  
5 I was deposed twice in the Engle case, and they were  
6 both in 1999. And that's it for depositions.

7 Q Have you ever testified at trial before?

8 A Yes. In 1991 I testified in the Ierardi  
9 case; and in the Engle case in February of 2000.

10 Q Dr. Meyer, when were you first contacted  
11 about being a witness in this action?

12 A For this particular case?

13 Q Yes.

14 A I'm not sure as to the exact date.

15 Q A month?

16 A It escapes me at the time. I don't know.

17 Q Six months ago? Three months ago? A time  
18 frame.

19 A It could have been six months ago.

20 Q And who contacted you?

21 A I believe Ms. Tyler did.

22 Q Are you under any sort of retainer with  
23 any law firm?

24 A No.

25 Q Are you employed or under contract with  
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1 any tobacco company?

2 A No.

3 Q Do you know what the West Virginia medical  
4 monitoring lawsuit is about?

5 A I know something about it, yes.

6 Q What do you know about it?

7 A That it's a class action case. And I know  
8 something about the complaint, and paid attention to  
9 the things that pertain to advertising and to  
10 advertising issues and the marketing practices.

11 Q What issues within that complaint do you  
12 believe pertain to advertising or marketing issues?

13 A The issues as to whether or not the  
14 advertising might have been misleading and might  
15 have targeted underage people and influenced them to  
16 start smoking.

17 Q Have you prepared in any way for your  
18 anticipated role as an expert in this case?

19 A Yes, I have.

20 Q How?

21 A And what I've done is I've read the two  
22 depositions of Mrs. Blankenship and Mrs. Sibb, I'm  
23 not sure how it's pronounced, and also looked at a  
24 copy of the complaint.

25 Q Any other materials?

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1 A In addition to that, I generally reviewed  
2 the reliance materials that have been provided.

3 Q Okay. We'll get to that in a moment. Who  
4 did you meet with in preparation for this  
5 deposition?

6 A It would have been Mr. McConnell and  
7 Ms. Tyler.

8 Q And how many times?

9 A Just the one time.  
10 Q And when was that one time?  
11 A It was last night. And it was for a very  
12 brief period of time.  
13 Q How long a time?  
14 A It might have been 15 or 20 minutes.  
15 Q To date how many hours have you spent in  
16 connection with your role as a potential expert in  
17 this case?  
18 A It would be a total of about six days at  
19 this point.  
20 Q And so that would be eight-hour days?  
21 A Yes.  
22 Q So roughly 48 hours?  
23 A That would be good, yes.  
24 Q And what is your hourly rate?  
25 A For review of documents and materials,

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11

1 \$175 an hour.  
2 Q And for deposition time?  
3 A \$225 an hour.  
4 Q And for travel time?  
5 A If I'm spending that time reviewing  
6 materials, then it's at the \$175 an hour rate. If  
7 I'm not doing that kind of review of any relevant  
8 materials when I travel, I don't bill for that.  
9 Q And is your hourly rate for depositions  
10 and trial testimony the same?  
11 A Yes, it is.  
12 Q \$225?  
13 A Yes, it is.  
14 Q Did you participate in drafting your  
15 disclosure that was made in this case?  
16 A Actually I was familiar with what the  
17 disclosure statement said that I was going to be  
18 expected to testify to. But I did not write it per  
19 se, no.  
20 Q How did you become familiar with it?  
21 A I was familiarized with it by  
22 Mr. McConnell.  
23 Q So it was drafted to the best of your  
24 understanding by Mr. McConnell and sent to you for  
25 review?

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12

1 A It was not sent to me for review. He  
2 reviewed it orally with me.  
3 Q Did you review any of your prior testimony  
4 in preparation for this, your role as an expert in  
5 this case?  
6 A No, I have not.  
7 Q Do you recall your prior testimony in  
8 Engle and Barnes, and is it Ierardi?  
9 A Ierardi, yes. Sure, some of it, I'm sure.  
10 Q And based upon what you recall, is there  
11 anything that you would change in that testimony?  
12 A Not that comes to mind at this point.  
13 Q You mentioned that you reviewed the  
14 deposition transcripts of Ms. Sibb and  
15 Ms. Blankenship, is that correct?  
16 A That is correct.  
17 Q And who supplied those to you?

18 A I believe Ms. Tyler did.  
19 Q Did you ask to see any other deposition  
20 transcripts in this case?  
21 A No, I did not.  
22 Q Did you review any other expert witness  
23 reports in connection with this case?  
24 A I have not.  
25 Q Did you ask to see any?  
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13

1 A No.  
2 Q Did you review any tobacco industry  
3 advertisements in connection with your preparation  
4 for being an expert in this case?  
5 A I'm not sure what you're referring to as  
6 to tobacco industry advertisements.  
7 Q Advertisements generated -- I'm not sure  
8 how to make this any -- Marlboro ads, Winston ads,  
9 what have you. Did you review or look back at any  
10 of those ads?  
11 A Oh, the advertising for the specific  
12 brands of cigarettes?  
13 Q That's correct.  
14 A Yes, I have. That's a constant review  
15 process for me.  
16 Q Could you explain that a little bit more?  
17 How do you do this constant review?  
18 A Well, I generally look over a large number  
19 of magazines, and going through some newspapers on a  
20 regular basis, looking for what the ads look like,  
21 the latest ads coming out from the various brands of  
22 cigarettes.  
23 Q And you do that in preparation for your  
24 role as an expert here, or just as a general  
25 practice in your job as a professor?

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14

1 A It's really as a general practice in my  
2 job as a professor, and because it's also related at  
3 the same time to my role as an expert.  
4 Q When you see an interesting -- in the past  
5 several months since you've been retained as an  
6 expert in this case, when you've seen an ad that has  
7 caught your attention for one reason or another,  
8 have you communicated with the tobacco industry to  
9 get more information about those ads?  
10 A No, I've never done that.  
11 Q Did you review any public opinion polls in  
12 preparation for your role as an expert in this case?  
13 A Past public opinion polls, yes. I mean, I  
14 haven't looked at any recently.  
15 Q Not since you've been retained as an  
16 expert in this case?  
17 A Yes, I think that's correct.  
18 Q Did the defendants, the tobacco industry,  
19 give you any internal documents regarding their  
20 advertising practices in preparation for your role  
21 as an expert in this case?  
22 A No, they did not.  
23 Q Did you ask for any?  
24 A No.  
25 Q Why not?

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1 A I have no interest in seeing those  
2 documents.

3 Q Why do you have no interest in seeing  
4 those documents?

5 A Because my interest and my expertise rests  
6 with, you know, what happens to advertising messages  
7 when they're presented and made available to the  
8 public, and what the public does in response to  
9 those advertisements. And my interest therefore is  
10 in the impact and way in which people out there use  
11 the ads or ignore the ads, as the case may be, in  
12 their normal day to day processes as consumers.

13 Q So you're not interested in the intent  
14 behind the ad, is that a fair characterization of  
15 what you just said?

16 A Well, intent is kind of an ambiguous  
17 concept in many respects because -- depending on  
18 who's doing the defining of what the intent is. My  
19 concern is with the impact, in a sense regardless of  
20 the intent and whoever it is that has the intent.

21 Q I guess when I speak of intent I mean the  
22 person who is placing the ad, which is the tobacco  
23 industry here.

24 A Okay. The person placing the ad, their  
25 intent is to reach a certain demographic group in

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16

1 the audience. And they're completely independent  
2 from those people who would actually create the ad.  
3 So their intent would be in terms of placing it in  
4 such a position where it was received by the most  
5 people that they were trying to reach with the ad.

6 Q I was sloppy in my word choice. When I  
7 speak of intent, I mean the tobacco company. And  
8 the tobacco company will of course hire marketers or  
9 placement people to place the ad.

10 A Yes.

11 Q And the people at advertising agencies to  
12 generate the ad. But at the end it's the tobacco  
13 industry, the individual company, that has an intent  
14 that is somehow communicated to the advertising  
15 agency and the advertising placement agency, is that  
16 correct?

17 MR. McCONNELL: I'm going to object to the  
18 form. You can answer.

19 THE WITNESS: In this particular case, I  
20 mean, ultimately the final approval or authority to  
21 say we're going to run this ad in this particular  
22 magazine is obviously the tobacco company that is  
23 responsible for the ad, with their particular brand  
24 that's in the ad. But in terms of the intent in the  
25 creation process, there are a lot of people at a lot

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17

1 of different levels who are involved in contributing  
2 to the creation of that ad.

3 And they might all have different ideas of  
4 what they think the intent of whatever it is that  
5 goes into the ad, and whatever they perceive, or  
6 what they're hoping for, more appropriately, will  
7 happen once the ad gets out there and reaches  
8 consumers.

9 So it's not just a simple process.  
10 BY MR. BAKER:  
11 Q I see. So there are instances where the  
12 intent of the tobacco company and the intent of the  
13 creators may not necessarily be identical, is that  
14 correct?  
15 MR. McCONNELL: Objection to form.  
16 THE WITNESS: Well, I think in some stages  
17 of the creative process the general concept of what  
18 they're trying to say in the ad, there might be some  
19 agreement internally. But then the specific  
20 execution of that, there might be some disagreement  
21 about whether or not this is saying it as clearly as  
22 they think it could be said or whether or not the  
23 actual composition and layout of the ad is with the  
24 right colors or these types of things.  
25 Again, a lot of different people are

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18

1 involved in contributing various aspects to any  
2 particular ad, and then of course to any particular  
3 campaign that's an ongoing series of ads, series of  
4 executions. So there are, again, a lot of different  
5 people involved with lots of different ideas and a  
6 lot of different perceptions of what's going on in  
7 the ad.

8 BY MR. BAKER:

9 Q I think I understand. To get back to my  
10 original question, then, your primary interest then  
11 is in the effect or the impact of the advertisement  
12 on the general public as opposed to what for lack of  
13 a better word we're going to call the intent on the  
14 front end?

15 A That would be a fair characterization.  
16 But I would add that it's not just what the ad does  
17 to people. It's what people do with the ads. And  
18 that's where my interest is.

19 MR. BAKER: Let's go to the first exhibit.  
20 We'll mark this as Exhibit 1.

21 (Meyer Exhibit 1 was identified.)

22 BY MR. BAKER:

23 Q Professor Meyer, this is the notice of  
24 deposition dated August 31st. You'll see on one of  
25 the pages, I guess on the third page, that your

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19

1 deposition is noticed for here, at Dechert in D.C.  
2 I would like you to turn to Exhibit A, the schedule  
3 of documents portion.

4 A I have it.

5 Q Let's look at point number 2. Plaintiffs  
6 have requested that you bring the following  
7 materials to your deposition: Your file on this  
8 case, including all correspondence, notes, draft  
9 reports, and other materials which may be relevant  
10 to your opinions in this case.

11 Have you brought those materials with you  
12 today?

13 A Yes, but I don't have anything in that  
14 category.

15 Q You have no correspondence with the  
16 lawyers who retained you?

17 A I have none, no.

18 Q Point number 3, then, any reports,  
19 articles, books, pamphlets or other materials which  
20 you have relied upon and have not cited in your  
21 expert report in this case. Actually, you have not  
22 made an expert report, but a disclosure has been  
23 made on your behalf.  
24 Are there reports, articles, books,  
25 pamphlets or other materials that you've relied upon  
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20

1 that I haven't asked about yet?  
2 A Yes.  
3 Q And what would those be?  
4 A I brought them. They're over there on the  
5 counter.  
6 MR. McCONNELL: For the record, this is  
7 Steve McConnell. I'm making available to Mr. Baker  
8 two boxes of reliance materials, a list of cases on  
9 which Mr. Meyer has testified in deposition or at  
10 trial, and Professor Meyer's updated CV. I'm just  
11 putting them in front of Mr. Baker.  
12 MR. BAKER: I appreciate that.  
13 BY MR. BAKER:  
14 Q And in those materials, are bills relating  
15 to your consultation in this or any other tobacco  
16 case, were those included?  
17 A I'm not sure -- I don't think there are  
18 any bills in there, no.  
19 Q I would like to request any bills that you  
20 generate in this case be provided to me.  
21 MR. McCONNELL: We'll take that request  
22 under advisement.  
23 BY MR. BAKER:  
24 Q Finally, am I correct in understanding  
25 that your transcripts of prior testimony are  
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21

1 contained in these boxes?  
2 A I don't know that, if the prior testimony  
3 is in there.  
4 MR. BAKER: It is not?  
5 MR. McCONNELL: I think just a list of his  
6 prior testimony is there.  
7 MR. BAKER: I would like to request copies  
8 of each of his prior.  
9 (Meyer Exhibit 2 was identified.)  
10 BY MR. BAKER:  
11 Q We've marked this as Exhibit 2. It's your  
12 disclosure. Let's turn to starting with the second  
13 page. It is your CV.  
14 A Yes.  
15 Q You can take a short moment to look  
16 through it.  
17 A Sure. I think you'll find I have a more  
18 recent, updated one that's included in the reliance  
19 materials there.  
20 Q Okay. I was unaware of that. What are  
21 the changes that are different from this CV and the  
22 one that's provided?  
23 A There was an additional publication in  
24 book chapters. It's listed as the last one at the  
25 end of the book chapters.  
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1 Q The "Pragmatism and" --  
2 A That's the one.  
3 Q That's the addition?  
4 A That is the addition, yes.  
5 Q Otherwise this CV accurately reflects your  
6 vital information, your education, your employment  
7 history, your publications, and your professional  
8 activities?  
9 A Yes, it does.  
10 Q Okay, then let's turn to the first page,  
11 then, and look at your disclosure.  
12 A Okay.  
13 Q Have you seen this disclosure before?  
14 A I have not seen it in this particular  
15 form. But again, it was orally communicated to me  
16 what was included in the disclosure.  
17 Q Based upon that oral communication, do you  
18 believe this accurately reflects the areas that you  
19 anticipate being called upon to testify to?  
20 MR. McCONNELL: I would object to the  
21 form. If you're going to ask him whether this  
22 document accurately reflects what he's going to talk  
23 about, I think the document itself is what he will  
24 rely upon, not any oral communication.  
25 BY MR. BAKER:

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1 Q Then let's take a moment and you can  
2 review it.  
3 (The witness reviewed the document.)  
4 MR. McCONNELL: Off the record.  
5 (Discussion off record.)  
6 BY MR. BAKER:  
7 Q Professor Meyer, I'm looking through your  
8 reliance materials here. Did you collect these  
9 yourself?  
10 A Yes, I did.  
11 Q I notice certain of the advertisements  
12 that are in your reliance materials contain what are  
13 called Bates stamp numbers. Were these previously  
14 provided to you in another case by the tobacco  
15 industry?  
16 A I don't believe that they were provided by  
17 the tobacco industry. They may have been used or  
18 produced for another case. And I don't know how  
19 those particular labels got on there. But these are  
20 ads that I've seen and reviewed myself personally.  
21 Q So now you've had a chance to read through  
22 this disclosure, is that correct?  
23 A I have.  
24 Q And does this disclose or accurately  
25 reflect what you believe you may be called upon to  
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1 testify as to in this case?  
2 A It does.  
3 Q Dr. Meyer, do you hold yourself out to be  
4 an expert on areas of mass communication,  
5 advertising and consumer behavior?  
6 A I do.  
7 Q And the disclosure materials that have  
8 been provided to me are the materials that you've

9 relied upon in part in forming the opinions that you  
10 set forth in this disclosure?  
11 A That's correct.  
12 Q Have you relied upon research that you  
13 yourself conducted?  
14 A Yes. And that is reflected in my  
15 curriculum vitae.  
16 Q Was any of this research funded in whole  
17 or in part directly or indirectly by the tobacco  
18 industry?  
19 A None of it, directly or indirectly.  
20 Q Were any of the studies upon which you  
21 relied that were not conducted by you funded in  
22 whole or in part directly or indirectly by the  
23 tobacco industry?  
24 A I'm thinking that none of them were. To  
25 my knowledge at this point I don't think any of them

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 were.  
2 Q To your knowledge does the tobacco  
3 industry fund academics in their research directly  
4 or indirectly, in whole or in part, concerning  
5 advertising, mass communication, or consumer  
6 behavior?  
7 A Not to my knowledge.  
8 Q In forming your opinions in this case,  
9 were there materials that you thought may be  
10 relevant but whose conclusions you discounted?  
11 A I'm not sure specifically. If there were  
12 a specific article or a specific reference that's  
13 not included that you would like me to consider, I  
14 could tell you whether or not I was familiar with it  
15 or that type of thing.  
16 Q Generally speaking, are there experts in  
17 the field of mass communication, advertising or  
18 consumer behavior that you know of that hold  
19 different views as to the effects of cigarette  
20 advertising on consumers?  
21 A Yes.  
22 Q And who might some of those individuals  
23 be?  
24 MR. McCONNELL: I'm going to object to the  
25 form of the question. You can answer.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

26

1 THE WITNESS: For example, Dr. Richard  
2 Pollay.  
3 BY MR. BAKER:  
4 Q Any others?  
5 A Professor Joel Cohen, C-O-H-E-N is his  
6 last name. These would be people who are from --  
7 who teach advertising or teach marketing or mass  
8 communications that I know specifically would have a  
9 different opinion.  
10 Q And Dr. Pollay and Dr. Cohen are respected  
11 academics, would you not agree?  
12 A They certainly have a certain standing in  
13 the field, sure.  
14 Q Would you agree that they have a certain  
15 expertise in advertising communication and consumer  
16 behavior?  
17 A Generally, of course they do, yes.

18 Q Taking a look more closely at your  
19 disclosure, looking at the second paragraph, and I'm  
20 going to read a section, starting with right about  
21 there.

22 A Okay.

23 Q It says, "Consumer decisionmaking is a  
24 complex process and is influenced by a number of  
25 factors that have more influence than the

A. WILLIAM ROBERTS, JR., & ASSOCIATES

27

1 information made available to consumers as  
2 controlled by marketers of products and services."

3 Did I read that correctly?

4 A Yes, you did.

5 Q And does this opinion apply to consumer  
6 decisionmaking regarding cigarettes?

7 A Yes, it does.

8 Q And what is the basis for your opinions?

9 A That there's a whole body of research  
10 which tells us very clearly in the area of smoking  
11 behavior, principally two decisions, to begin  
12 smoking and to continue to smoke, that these  
13 behaviors themselves are influenced by a complex  
14 array of factors, and that those factors that are  
15 most influential are those factors which are not  
16 controlled by people who produce and distribute and  
17 disseminate the advertising and marketing  
18 communications messages.

19 And these are the factors, these  
20 non-marketer controlled factors, that determine  
21 whether or not somebody begins smoking and continues  
22 to smoke.

23 Q Are you aware of any internal tobacco  
24 industry studies regarding consumer decisionmaking  
25 regarding cigarettes?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

28

1 A Not specifically that I've looked at, no.

2 Q And did you request that any of these, if  
3 they exist, these internal tobacco industry studies  
4 regarding consumer decisionmaking, be provided to  
5 you?

6 A No, I did not.

7 Q Do the factors that influence consumer  
8 decisionmaking regarding cigarettes change with  
9 respect to the age of the consumer?

10 A Considering age as the only variable  
11 factor, certainly people at different ages are  
12 affected by different factors in the decisions that  
13 they make as consumers. But it would be inaccurate  
14 of me to say that, once having said that, that there  
15 would be differences in age.

16 I would be remiss if I didn't point out  
17 that age is certainly not the only factor which  
18 would bring to bear different factors or forces.  
19 Each individual consumer -- I mean, we could  
20 identify different factors or maybe even common  
21 factors operating differently with different weights  
22 and different strengths at any particular point in  
23 time in a consumer's development, literally from  
24 maybe two years of age on up to prior to death.

25 So, I mean, age is a factor, yes, but so

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 are a lot of other things in the environment around  
2 a particular individual.

3 Q What are some of these major factors,  
4 then?

5 A Well, the role, for example, of family.  
6 And that's particularly important with regard to the  
7 decision to start smoking and continuing to smoke.  
8 The role that, for example, if parents smoke, what  
9 parental attitudes are towards smoking for their  
10 children, whether or not they smoke in the house or  
11 allow their children to smoke around them, and  
12 whether or not there are any punishments, for  
13 example, if they're caught smoking before a certain  
14 age, if they're living at home.

15 We know these things, for example, are  
16 important. Whether or not you have brothers and  
17 sisters and especially older brothers and sisters  
18 that might be admired by a younger sibling and  
19 whether or not the older brothers and sisters smoke  
20 or not is a good example.

21 But also extended family as well. Many  
22 times people will have regular contact with  
23 grandparents, aunts and uncles, who may at some  
24 point be living in the household or at least be  
25 living fairly close to the household where there is

A. WILLIAM ROBERTS, JR., & ASSOCIATES

30

1 regular family contact; and again, whether they  
2 smoke and what they might communicate about smoking,  
3 good or bad, by being a role model or providing an  
4 example.

5 These are all strong indications of  
6 factors that would influence consumer behavior of an  
7 individual in a number of different contexts, but  
8 have been found in the research to be particularly  
9 important in the decision to start smoking and  
10 continue to smoke.

11 Q Then is it your opinion that information  
12 made available to consumers as controlled by tobacco  
13 companies has no effect on consumer decisionmaking?

14 A Actually it has a very powerful effect,  
15 and it operates -- but however, it does operate in  
16 very limited ways.

17 And the way in which advertising works  
18 especially for tobacco products and specifically  
19 cigarettes is that it plays a strong role on the  
20 brand preference or the brand choice that consumers  
21 make, and it plays a very strong role in one brand  
22 competing against another brand, and against all the  
23 other brands that are out there also trying to get  
24 smokers to smoke their particular brand.

25 This operates in two important ways. One

A. WILLIAM ROBERTS, JR., & ASSOCIATES

31

1 is to keep your customers who are smoking your brand  
2 smoking your brand; brand loyalty. And the other  
3 area of course is those people who are looking to  
4 switch brands because they're dissatisfied with the  
5 brand they're currently smoking, or perhaps looking  
6 for a less expensive cigarette that still delivers  
7 quality as a brand. They may be in the market to  
8 switch brands. So your advertising then will be out

9 there to reach consumers who might be interested in  
10 switching brands.

11 And of course we're talking about smokers  
12 here. And that's a very, very important influence  
13 that -- and a role that advertising plays, and  
14 accounts for the fact of why the industry spends as  
15 much money as it does, and why all the other  
16 industries that engage in brand competition, the  
17 automotive industry, for example, the computer  
18 industry, personal products, cosmetics, all of the  
19 basic product categories that engage in brand  
20 competition, why they spend so much money on  
21 advertising.

22 It's selling -- getting you to buy my  
23 brand and not somebody else's brand.

24 Q As a general rule does tobacco industry  
25 advertising and promotion target specific age

A. WILLIAM ROBERTS, JR., & ASSOCIATES

32

1 groups?

2 A I think, among smokers, that some brands  
3 are obviously geared toward younger adult smokers,  
4 and some kind of -- the general smoking population.  
5 And we're talking here about adult smokers in every  
6 case.

7 Q So what is a younger adult smoker in your  
8 definition?

9 A It would probably be someone in the  
10 neighborhood of 21 years old.

11 Q Then is it possible to target that  
12 21-year-old with cigarette advertising and promotion  
13 and not affect the consumer decisionmaking of  
14 persons under 18, even if that person under 18  
15 already smokes?

16 A Is it possible to do that?

17 Q Yes.

18 A I imagine it would be possible to do that.  
19 But there's always going to be exposure to the ads  
20 themselves, to smokers of all ages.

21 Q Do you think it actually occurs when you  
22 target a 21-year-old with your brand advertising,  
23 that it will also have an effect on someone under 18  
24 who already smokes?

25 MR. McCONNELL: Objection to form.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

33

1 THE WITNESS: It certainly could have that  
2 effect. It certainly could. But it obviously  
3 wouldn't be the only thing influencing brand  
4 preference.

5 BY MR. BAKER:

6 Q Have you ever studied that effect?

7 A I've looked at the research on the effect  
8 of advertising in promoting brands for people of  
9 various ages, sure.

10 Q And is there research out there that  
11 discusses for persons under 18 who already smoke the  
12 effect of advertising on those 18-year-olds?

13 A There is some research that looks at the  
14 brand preferences of underage smokers and looks at  
15 the advertising practices of those brands.

16 But that's not the same in my mind in  
17 terms of the effect of the advertising specifically

18 on underage smokers, because those studies to my  
19 knowledge don't take specific ads and take a random  
20 sample of underage smokers and see how those smokers  
21 respond to that advertising and the degree to which  
22 it influences maybe brand preference or any of the  
23 other variables that might be under consideration.  
24 So studies have looked at this, but  
25 they're simply looking for kind of big behavioral

A. WILLIAM ROBERTS, JR., & ASSOCIATES

34

1 indicators. You take a sample of underage smokers  
2 and say what brands you generally prefer to smoke,  
3 and then I look at the advertising expenditures of  
4 those brands, and I say, well, is there a connection  
5 here. But in terms of specifically the effect of  
6 those tobacco ads on underage smokers, they haven't  
7 been studied.

8 Q Let's look at the second or the third  
9 paragraph of your disclosure. It says that you're  
10 also expected to testify regarding the dominant  
11 roles that peers, family, friends, situational  
12 factors, lifestyle, and other social influences play  
13 in consumer decisions about smoking.

14 What are situational factors?

15 A That might be relevant to a given  
16 individual, the unique factors surrounding a  
17 particular individual that that person finds himself  
18 growing up in in a household.

19 As I mentioned before, when I was talking  
20 about the complex array of factors that influence  
21 the decision to start and continue to smoke, for  
22 example someone might be living with an extended  
23 family member, and that might be unusual, might  
24 spend five years where an aunt was living in the  
25 household.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

35

1 And that might be a unique situational  
2 factor for that particular individual which would  
3 make the circumstances different, especially if the  
4 presence of that individual was related to a  
5 particular behavior in question such as smoking.

6 Q Can you give me another example of the  
7 situational factor?

8 A The situation involving, for example, a  
9 kid who goes to school and is hanging out with a  
10 particular group of friends, and has to move, family  
11 up and moves, and they go to a new community, and  
12 this particular child finds himself or herself in a  
13 circumstance where they have to try to blend in with  
14 a new group of friends and a new peer group.

15 Again, that would you be unique  
16 situational factors that would be present for one  
17 person and not for a lot of other people. So my  
18 concern here is with common factors, and then unique  
19 factors. And that's the meaning of the situational  
20 factors. There could be a number of other things  
21 that would make the situation different as well.

22 Q What do you mean by the word "lifestyle"?

23 A "Lifestyle" refers to all of the things  
24 that you do, not simply demographics, in terms of  
25 how you spend your time, for example.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 "Lifestyle" refers to your participation  
2 in activities, the degree to which you socialize  
3 with your peers, what kind of socialization take  
4 place with your peers, what events you attend, not  
5 only just how often do you go to movies but what  
6 movies do you see and this type of thing; where do  
7 you live, you know, what city, what neighborhood,  
8 what's the neighborhood like, these types of things.

9 Q "Other social influences," what does that  
10 term mean to you?

11 A Yes, very important in this particular  
12 case, specifically with regard, again, to the two  
13 decisions on starting to smoke and continuing to  
14 smoke. The role, for example, of the church or the  
15 synagogue in influencing children who are -- and  
16 adults, for that matter, who may be smokers or may  
17 be thinking about starting to smoke. In many  
18 instances the church plays a strong role in  
19 discouraging, for example, youth from starting to  
20 smoke.

21 And they do that in terms of formal  
22 religious education. And this just doesn't mean  
23 attending parochial schools, but also just in terms  
24 of attending Sunday school or worship services,  
25 et cetera, where they're actively involved in the

A. WILLIAM ROBERTS, JR., & ASSOCIATES

37

1 church.

2 And there's research which shows, for  
3 example, that adolescents who attend church  
4 regularly are far less likely to start smoking  
5 cigarettes than youth who attend church either not  
6 at all or much less regularly.

7 And again, kind of a global indicator  
8 which shows us some differences which points to the  
9 fact that church, for example, can be a very  
10 important influence for some, for some kids, and  
11 obviously for some adults as well, where the church  
12 says, you know, your kids shouldn't be smoking, and  
13 if your kids are smoking or thinking about starting  
14 to smoke, you need to be an active role as a parent  
15 and not allow that to happen and do everything in  
16 your power that you can to prevent it from  
17 happening.

18 It would be a good indication. And we  
19 could make the same parallel in terms of the school,  
20 the school influence; health classes, rules that  
21 specifically prohibit smoking, and stressing the  
22 idea that you don't smoke.

23 Any kind of information campaigns that the  
24 schools use as part of projects, that might be part  
25 of projects that are designed to influence their

A. WILLIAM ROBERTS, JR., & ASSOCIATES

38

1 behavior with regard to alcohol and for other kinds  
2 of behaviors that the school is trying to discourage  
3 and not have youth become involved in.

4 So that, again, can be a very important  
5 source of role.

6 Q I would characterize those as positive  
7 social influences. Are there negative social  
8 influences that you can think of?

9 MR. McCONNELL: Objection to form. You  
10 can answer.  
11 THE WITNESS: The negative social  
12 influences that would take place generally have been  
13 found -- with regard, again, to smoking, have been  
14 where the peer group values have been to encourage  
15 smoking, starting to smoke and continuing to smoke.  
16 And also the peer influence has been very strong in  
17 terms of the brands of cigarettes that kids will  
18 smoke in order to fit in with the peer group.

19 Or it can be a negative influence to the  
20 extent that they're looking at a peer group that  
21 they're not a member of, would like to become a  
22 member of, or be like people who are in that group,  
23 because they see that these people are admired or  
24 looked up to, and they want to be in the same boat,  
25 so they look at the behaviors, how they dress, how

A. WILLIAM ROBERTS, JR., & ASSOCIATES

39

1 they talk, what they do.

2 And if that includes smoking, it can be an  
3 influence on their decision to start smoking, and  
4 then smoke a particular brand that they might be  
5 smoking.

6 BY MR. BAKER:

7 Q I think I understand. Is there anything  
8 in tobacco industry advertising, have you seen  
9 anything in tobacco industry advertising that plays  
10 to these influences, be they situational factors,  
11 lifestyle, or social influences?

12 A Very little in terms of the factors as we  
13 know that they operate in real life. For example,  
14 the factors of peer influence, if we're talking,  
15 again, about underage smokers.

16 Q I'm talking about all smokers at this  
17 point.

18 A Okay. Then I think you have to help me  
19 with being a little more specific in terms of what  
20 ads you're talking about.

21 Q I'm asking you. Have you seen ads that  
22 play upon one's social influences, one's lifestyle  
23 situational factors, that's intended to build upon  
24 those factors that the tobacco industry knows exists  
25 in the population in order to better market their

A. WILLIAM ROBERTS, JR., & ASSOCIATES

40

1 products?

2 MR. McCONNELL: Objection to form.

3 THE WITNESS: What I do see in my review  
4 of cigarette advertising is that the cigarette ads  
5 and what's in the cigarette ads, how the ads are  
6 composed and what we find when we look at those ads,  
7 really very little difference between what's in  
8 those ads and the ads for a great many other  
9 products and services.

10 I see very little if anything that's at  
11 all unusual about what cigarette advertisers do in  
12 comparison to advertisers for other products and  
13 services and the brands of those products and  
14 services. In fact there is actually even less than  
15 you see for lots of other products and services.

16 We see unidentified individuals, we may  
17 see a single model in the ad, or there may be a man

18 and a woman or two women or two men. And there will  
19 be some reference to a particular brand of  
20 cigarettes as part of the ad. And that to my way of  
21 thinking is very, very innocuous in comparison to  
22 some of the other more striking magazine ads for  
23 brands of other products or services.

24 So it's kind of mundane, doesn't stand  
25 out, doesn't appear to be particularly unique. And

A. WILLIAM ROBERTS, JR., & ASSOCIATES

41

1 these are always unidentified models. I mean, we  
2 don't know who any of these people are. And the  
3 fact that they look the way they do, they look like  
4 the people in all the other ads for products and  
5 services.

6 BY MR. BAKER:

7 Q Let's look a little bit at market  
8 controlled factors, then. I guess by "market  
9 controlled factors" you mean tobacco industry  
10 advertising, is that correct?

11 A It would include advertising and  
12 promotion.

13 Q Advertising and promotion. Does tobacco  
14 industry advertising and promotion in your opinion  
15 have any effect on a decision, on an individual's  
16 decision to start smoking or to continue smoking?

17 A It does not have any influence on the  
18 decision to start smoking and continue to smoke. It  
19 certainly does influence the decision on which  
20 brands they choose to smoke and continue to smoke.

21 Q So no effect on the decision to start  
22 smoking or to continue to smoke, is that your  
23 testimony?

24 A That would be my testimony, yes.

25 Q An unequivocal no?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

42

1 MR. McCONNELL: Objection to form.

2 THE WITNESS: I would say that there are  
3 no cases that I know of where an individual has  
4 started smoking and continued to smoke because of  
5 cigarette advertising and promotion.

6 MR. McCONNELL: Fred, can we take a break  
7 now, about a ten-minute break? I've got to get on a  
8 call, but I'll get off it just as quickly as I can.  
9 For the record, I want to provide to you I think the  
10 only bill that we got from Professor Meyer.

11 MR. BAKER: Also for the record, you're  
12 correct, I do have the Barnes deposition, and I was  
13 mistaken, I do have the Ierardi. I thought that was  
14 a deposition as well. I do not have the Engle  
15 materials.

16 MR. McCONNELL: Either the depositions or  
17 the trial testimony?

18 MR. BAKER: I don't have either of those.  
19 I have not seen those.

20 MR. McCONNELL: Okay.

21 MR. BAKER: Off the record.

22 (Recess.)

23 BY MR. BAKER:

24 Q Is there an advantage to attracting  
25 smokers to one brand when they first begin smoking?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1           A     I think that would depend. It would seem  
2 initially, the initial reaction to that would say,  
3 sure, there would be a lot of advantage in that.  
4 The exception to that, however, specifically with  
5 regard to smoking is, as I mentioned in a previous  
6 answer, the brand that a youth might start smoking  
7 is not a brand that the individual is actually  
8 making an active individual choice.

9           So, for example, if the peer group of  
10 which this particular individual is a member or  
11 aspires to be a member of, whatever brand they're  
12 smoking, that's going to be the brand choice that's  
13 going to influence the individual when they start  
14 smoking. They're going to smoke that brand.

15           They may continue to smoke that brand at a  
16 later stage in their smoking. But the research is  
17 also very clear that as people get older, the peer  
18 influence is less and less, and they begin to make  
19 choices as individuals. So they may begin to  
20 actually take up another brand and be influenced by  
21 advertising or other factors.

22 BY MR. BAKER:

23           Q     Is there research that indicates, though,  
24 that the first cigarette that you're exposed to, be  
25 it if your friend offers you a Winston or a Camel or

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 a Marlboro, that you will continue to smoke that  
2 brand at least initially?

3           A     Again, it would depend on circumstances.  
4 I mean, if, for example, my first cigarette, if it's  
5 for example at a party, and somebody comes up and  
6 offers me a cigarette and I decide to accept that  
7 cigarette, I may not even know what brand it is.  
8 So, I mean, I may not even care, because I've made  
9 the decision I'm going to smoke, so I smoke the  
10 cigarette, maybe smoke another cigarette.

11           And at that point and after that point,  
12 maybe the next social occasion where there's smoking  
13 available, I decide I'm going to smoke again, and I  
14 might know more about the brand. I think there  
15 would be a lot of variability in regard to that, as  
16 far as like when the first cigarette is.

17           Q     Are you aware that there are studies that  
18 indicate that the majority of people who begin  
19 smoking begin smoking prior to the age 18?

20           MR. McCONNELL: I object to the form.

21           THE WITNESS: In terms of experimenting  
22 with smoking, that is certainly true. And in terms  
23 of occasionally smoking, that is also true. But the  
24 decision to become a regular smoker as defined by,  
25 you know, the average smoking, which is

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 approximately 19 or 20 cigarettes a day among the  
2 average adult smoker, that occurs at actually a much  
3 later age.

4           So it depends on what you mean by starting  
5 to smoke.

6 BY MR. BAKER:

7           Q     So you used three phrases there, you said  
8 experimental smoker, regular smoker, and what was

9 the third one?  
10 A No, actually experimental smoker and then  
11 an occasional smoker, and then becoming a regular  
12 smoker where you might smoke -- regularly defined on  
13 a daily or almost daily basis, but not necessarily a  
14 number of cigarettes, large number of cigarettes.  
15 And then regular, daily, average adult smoking  
16 approximately a pack a day.

17 MR. DAVENPORT: (via telephone) Folks, if  
18 I could step in here just for a minute, this is Mike  
19 Davenport. I'm stepping in for John Dascoli as  
20 plaintiffs' local counsel. I just wanted to let the  
21 court reporter know.

22 BY MR. BAKER:

23 Q What characteristics constitute an  
24 experimental smoker?

25 A An experimental smoker is a person who has  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

46

1 some interest in finding out about what it's like to  
2 smoke a cigarette. So there's some curiosity  
3 involved.

4 There's some idea that it might be  
5 something at least worth trying, to the point where,  
6 given an appropriate opportunity or circumstance  
7 where they can do this, where for example maybe  
8 their parents wouldn't see them, or maybe some of  
9 their friends wouldn't see them, or would see them,  
10 depending on the circumstances, kind of to satisfy  
11 the curiosity and see what the experience is like.

12 Q And then an occasional smoker, what  
13 characteristics does that person have?

14 A This would be somebody I think that would  
15 have already experimented, perhaps gone through  
16 that -- the usual phase of coughing and tearing up  
17 in the eyes and wheezing, and the other kinds of  
18 things when somebody really doesn't know how to  
19 actually smoke a cigarette, and maybe wants to try  
20 it again, and maybe in certain social settings,  
21 finds it either because they think to fit in they  
22 should be doing this, or for various other reasons,  
23 they will occasionally smoke.

24 Q Are these delineations, experimental  
25 smoker, occasional smoker, and regular smoker, ones

A. WILLIAM ROBERTS, JR., & ASSOCIATES

47

1 that you yourself have created, or you've seen in  
2 medical literature, or used in the advertising  
3 world? Where did these three categories come from?

4 A Well, the categories have been defined in  
5 various ways by various researchers out there in the  
6 field. I mean, certainly people in the medical  
7 field have offered some definitions of different  
8 stages. But various studies have defined the stages  
9 in different ways. But they generally come down to  
10 verbal equivalents such as the ones I've suggested,  
11 I think.

12 Q I want to make sure I understand you. Do  
13 you agree that the majority of people who begin  
14 smoking begin when they are less than 18?

15 MR. McCONNELL: Objection to form.

16 THE WITNESS: Again, in terms of the  
17 operational definitions of beginning to smoke,

18 certainly in terms of experimenting or even  
19 occasional, yes, most of that would occur before the  
20 age of 18.  
21 BY MR. BAKER:  
22 Q Would you agree that the majority of  
23 people who begin smoking become regular smokers  
24 prior to the age of 18?  
25 A Well, I don't think that anywhere near a  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

48

1 majority of people who experiment or even smoke  
2 occasionally become regular smokers.  
3 Q That wasn't quite my question.  
4 A I'm sorry. Then I misunderstood.  
5 Q Maybe I misphrased it. Do you agree that  
6 the majority of people who begin smoking and become  
7 regular smokers become regular smokers prior to the  
8 age of 18?  
9 A It's pretty close to 18, I'm not sure  
10 exactly, plus or minus a year or two, and depending  
11 on when it was studied and what methodology was used  
12 to study it.  
13 Q Would you agree that at least a large  
14 number of people who begin smoking prior to the age  
15 of 18 and who are regular smokers prior to the age  
16 of 18 -- I'm sorry. That didn't come out right. If  
17 it's not the majority who begin smoking prior --  
18 strike that. I think I understand. Let's turn back  
19 to your disclosure.  
20 A Okay.  
21 Q Looking at the fourth paragraph, the  
22 second sentence reads, "Cigarette brand advertising  
23 is used to differentiate among brands, promote brand  
24 loyalty, and encourage brand shifting among those  
25 who already smoke and may have an interest in trying  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

49

1 a different brand."  
2 Did I read that correctly?  
3 A If you said "and may have an interest in  
4 trying a different brand," yes.  
5 Q Let's look at the promotion of brand  
6 loyalty. Does cigarette brand advertising intended  
7 to promote brand loyalty, does cigarette advertising  
8 intended to promote brand loyalty differentiate  
9 between regular smokers or smokers, whether they be  
10 regular or occasional smokers, under the age of 18  
11 and over 18?  
12 MR. McCONNELL: Objection to form.  
13 THE WITNESS: Well, in this particular  
14 case, the ad is out there, and it's available, and  
15 it's trying to connect with those people who either  
16 smoke that particular brand or may be interested in  
17 switching brands and therefore might be interested  
18 in this particular brand that's advertised.  
19 So there's no sense of what's supposed to  
20 happen there. It's out there to present an image  
21 for that particular brand that connects with current  
22 customers, keeping them brand loyal, reminding them  
23 this is your brand and this is part of our contract,  
24 which says we deliver a quality brand, and we are  
25 that quality brand, and this is your brand, so the  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 next time you buy cigarettes, we hope you'll  
2 continue to buy this brand.

3 And each of the brands in competition with  
4 each other are essentially engaging in that very  
5 same process.

6 BY MR. BAKER:

7 Q And that brand loyalty type advertising  
8 does not differentiate between smokers under the age  
9 of 18 and smokers over the age of 18?

10 MR. McCONNELL: Objection to form.

11 BY MR. BAKER:

12 Q Is that correct?

13 MR. McCONNELL: I'm sorry. Objection to  
14 form.

15 THE WITNESS: To my knowledge I would have  
16 no way of telling that, looking at the ads.

17 BY MR. BAKER:

18 Q Are there means that the tobacco industry  
19 could use in its brand advertising to somehow -- are  
20 there means that the tobacco industry could use in  
21 its advertising that is intended to promote brand  
22 loyalty? Are there means that they could use to  
23 differentiate between underage smokers and smokers  
24 who are over the age of 18?

25 A I think the industry strictly adheres to  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 the code, cigarette advertising code, which says  
2 that they aren't going to do certain things, for  
3 example, that would influence underage smokers. And  
4 they specifically -- for example, that the models  
5 must be and look at least 25 years of age, for  
6 example. I don't know of any other industry that  
7 has a similar provision that governs the creation of  
8 the advertising and promotional materials.

9 And that's a good example where the  
10 industry is clearly positioning itself to adult  
11 smokers.

12 Q It's the goal of the tobacco industry,  
13 though, with its brand loyalty advertising or its  
14 advertising geared towards brand loyalty, to retain  
15 that person as a customer, is that correct?

16 A That is correct. For that brand, that's  
17 right.

18 Q And aside from perhaps using older models,  
19 can you give me other examples where that brand  
20 loyalty type advertising does not impact smokers who  
21 are under the age of 18?

22 MR. McCONNELL: Objection to form.

23 THE WITNESS: Well, for example, I mean, a  
24 great many cigarette ads that I'm familiar with will  
25 feature the cigarette pack as the dominant part of

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1 the ad. It seems to me that that is a clear example  
2 of where they're promoting that particular brand.  
3 And there's nothing unique, there's nothing unique  
4 about that in terms of an audience as defined by age  
5 such as you've suggested.

6 BY MR. BAKER:

7 Q And so I want to understand, so there is  
8 no real differentiation in brand loyalty type

9 advertising with respect to the age of the customer,  
10 is that correct?

11 MR. McCONNELL: Objection to form.

12 THE WITNESS: When we're going after brand  
13 loyalty in the cigarette industry or in any other  
14 industry, for that matter, what you do is you try to  
15 do ads where the consumers you're trying to reach as  
16 your customers will connect with what it is you're  
17 saying in your ads. And since the -- you know, 98  
18 percent of the smoking market consists of people who  
19 are 18 years of age and older, that's where the  
20 business comes from, and that's where the ads are  
21 aimed.

22 BY MR. BAKER:

23 Q Repeat that last part. 98 percent of the  
24 business market --

25 A Of the cigarettes that are consumed in the  
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53

1 United States are consumed by people 18 years of age  
2 and older. So for the cigarette industry, that's  
3 where their business is. Their core business is  
4 coming from that 98 percent. So their advertising  
5 is going to be placed in such a position where it is  
6 going to connect with their customers.

7 And what it's going to communicate to  
8 their customers and what their customers are going  
9 to use that advertising for is the reminder of this  
10 information about the particular brand and the  
11 attributes of that particular brand, which reminds  
12 the consumer that this is the brand that I smoke,  
13 this is the brand that delivers the quality and the  
14 pleasure of smoking this particular brand of  
15 cigarettes.

16 Q Where did the figure, 98 percent, come  
17 from?

18 A I believe that comes from the Centers for  
19 Disease Control and the studies that the Federal  
20 Government has funded.

21 Q Let's look now at brand shifting. Explain  
22 to me what brand shifting advertising is, please.

23 A Well, in some instances there may be a  
24 pretty clear attempt to structure an ad that might  
25 appeal to someone who is interested in trying a

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54

1 different brand. And the ad copy may say something  
2 like, try so and so for a more refreshing smoke,  
3 that type of thing.

4 Usually what they try to do, though, is  
5 connect with customers, and then also pick up people  
6 who might be interested in switching to a different  
7 brand simply by the presence and availability, the  
8 visibility, if you will, of the ad being out there  
9 in the marketplace reaching and connecting with  
10 smokers.

11 So if I'm smoking brand A at this point  
12 and I'm thinking about switching because I'm not  
13 really satisfied with this brand, then when I'm  
14 considering which brand I should try next, what I  
15 want to do as an advertiser is be there with my ads  
16 for my brand saying, interested in switching, well,  
17 how about this particular brand.

18 So that's the objective, and that's pretty  
19 much how it operates. Have a presence, and have a  
20 presence in the mind of the individual smoker.  
21 Q Does cigarette advertising that is  
22 designed to encourage brand shifting or at least  
23 make known its availability, does that differentiate  
24 between smokers who are over the age of 18 or under  
25 the age of 18?

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55

1 MR. McCONNELL: Objection to form.

2 THE WITNESS: I don't see that there's any  
3 evidence of that in the ads themselves. And  
4 certainly in terms of the impact of the ads, that's  
5 not at all what's going on.

6 BY MR. BAKER:

7 Q So is there an age level at which the  
8 tobacco industry believes a smoker is most  
9 vulnerable to brand switching?

10 MR. McCONNELL: Objection to form. Calls  
11 for speculation. Lacks foundation.

12 THE WITNESS: I don't think that there is  
13 one age better than any other that would help say,  
14 these people are most likely to switch brands. What  
15 we've seen in the cigarette marketplace in terms of  
16 brand shares of the market is lots of ups and downs  
17 over the years from one brand to another.

18 One brand is particularly popular for a  
19 while, and all of a sudden it begins to wane in  
20 popularity, no one is really quite sure why, and the  
21 company with the brand, with the waning brand  
22 shares, is kind of at a loss to figure out why this  
23 is happening and to put a stop to it.

24 Other brands become popular for a short  
25 period of time and then tend to disappear into the

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56

1 background. So what that indicates to me is that  
2 the market itself has a number people who at any  
3 given point of time may be looking to try a  
4 different brand, and it might be for completely  
5 different reasons.

6 I might be satisfied with the brand I'm  
7 smoking now, but I may not want to pay the premium  
8 price for that brand, so I look for a cheaper  
9 alternative, for example. So that may -- or I get  
10 coupons, you know, getting two dollars off a pack,  
11 buy two packs, get one free, and I say, here's a  
12 promotional thing, I'll switch to that particular  
13 brand because I can get a free pack of cigarettes.

14 So I wouldn't want to generalize at all in  
15 terms of age or any other group of characteristics,  
16 other than saying that at any given point in time  
17 there are people out there who are looking to or  
18 might be amenable to switching brands, and in fact  
19 they do.

20 BY MR. BAKER:

21 Q And that would include underage smokers,  
22 would it not?

23 A Sure.

24 Q Would you, based upon what you said thus  
25 far, would you agree that tobacco, cigarette

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1 advertising is a rather blunt instrument in reaching  
2 a specific target audience?

3 MR. McCONNELL: Objection to form.

4 THE WITNESS: I would preface it by saying  
5 that all advertising, all advertising for most  
6 established products and services and the brands  
7 thereof is an extremely blunt instrument.

8 And what they try to do is to sharpen it  
9 in as many different ways as they can. But one of  
10 the things that advertisers always end up with  
11 inevitably is that they end up paying for in a sense  
12 the cost to place their advertising, they end up  
13 paying for people in the audience that are not their  
14 customers.

15 And there's really not very many ways that  
16 have been demonstrated in the past that are  
17 successful in getting around that very fact. So  
18 it's inherently an inefficient process.

19 BY MR. BAKER:

20 Q So in other words, and correct me if I'm  
21 wrong, I'm trying to understand here, in other words  
22 tobacco industry advertisement, irrespective of what  
23 the tobacco industry intends, will reach underage  
24 smokers, is that a fair statement?

25 A There is going to be some of that,

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1 certainly. And some of that will be unavoidable.  
2 But again, as I said, there is some sharpening that  
3 you can do. And it's clear the industry tries to  
4 sharpen where it reaches its customers.

5 And again, its customers are  
6 overwhelmingly above the age of 18. So that's where  
7 they're going to place their ads, that's how they're  
8 going to advertise, to connect with adult smokers.  
9 And that's what they do.

10 Q And are you aware of the tobacco  
11 industry's repeated statements that it does not want  
12 underage people to smoke its products?

13 A Yes.

14 Q Yet at the same time by advertising they  
15 know that at least some segment of the population  
16 which is underage smokers is going to be reached?

17 MR. McCONNELL: Objection to form.

18 BY MR. BAKER:

19 Q Is that correct?

20 A Again, an inevitable consequence. And  
21 something that they're able to control to a degree,  
22 like any other advertiser. But they're certainly  
23 going to be left with a residual that they simply  
24 cannot control.

25 Q Looking down at the fifth paragraph of

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1 your disclosure, it states that you may testify that  
2 there is no evidence that cigarette advertising and  
3 promotion with the color and imagery used therein  
4 influences nonsmokers young or old to continue  
5 smoking or continue smoking if they would otherwise  
6 quit.

7 No evidence, I'm correct in understanding  
8 that that's unequivocal, no evidence exists to prove

9 that point?  
10 A In the decision to start or continue to  
11 smoke, yes.  
12 Q Your disclosure also states in the fourth  
13 paragraph that you're familiar with cigarette  
14 advertising and promotion expenditures, and that  
15 these expenditures are comparable with advertising  
16 and promotion expenditures for other products. From  
17 where did you get your information for cigarette  
18 advertising and promotion expenditures?  
19 A That has come from a couple of different  
20 sources. One of these would be Advertising Age,  
21 which is a trade publication for the industry. And  
22 in terms of market shares and some references to  
23 expenditures, there are generally articles that have  
24 been published in Business Week over the years that  
25 summarize and provide that kind of information.

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60

1 Q What is the most recent year that you have  
2 information on concerning tobacco industry  
3 advertising expenditures?

4 A I'm not sure if the 1999, complete 1999  
5 year figures are out yet, but I had the complete  
6 figures for all product categories for 1998, and  
7 then going back, 1997, '96, et cetera.

8 Q For 1998, what was the number, the dollar  
9 amount of tobacco industry expenditures on  
10 advertising and promotion?

11 A In this particular case it's kind of a  
12 misleading figure, because they throw everything  
13 into one category. For example, in the promotional  
14 expenditure category, it also includes expenditures  
15 for something called slotting or slotting  
16 allowances. And this is money that's paid for shelf  
17 space, how much and where the shelf space is  
18 located. That's done to retailers to position a  
19 particular brand over another brand.

20 But just in terms of advertising  
21 expenditures itself, in fact it's kind of difficult  
22 to sort that out from what the slotting fees are,  
23 the promotional fees, et cetera, because we don't  
24 have comparable indicators.

25 But what Advertising Age publishes, for

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61

1 example, in rank ordering the various product  
2 categories, and we see where tobacco ranks in terms  
3 of advertising and promotional expenditures, and  
4 this is paid media advertising, they're no longer  
5 even in the top ten categories, and haven't been so  
6 for the past few years.

7 Q And what was the number for '98 for  
8 tobacco advertising?

9 A They weren't included in the top ten,  
10 so -- and I'm not sure what the tenth or the lowest  
11 figure was that Advertising Age reported, because  
12 they dropped out of the top ten categories.

13 Q What were the leading product categories?

14 A I believe automotive is generally at the  
15 top of the list. And other things would include  
16 computers and peripherals related to computer  
17 technology and information technology, they're a big

18 category. The entertainment industry, huge  
19 advertising expenditures and promotional  
20 expenditures. That would include things like  
21 promoting films, et cetera.  
22 Also in there of course are personal  
23 products, things like toothpaste, et cetera. And  
24 household products, big category, cleaning products,  
25 paper towels, the like. Also in the top ten would

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62

1 be cosmetics, beauty products and that particular  
2 line of things. Those are the ones that come to  
3 mind.

4 Q These sectors for automotive, computers,  
5 entertainment, cosmetics, all of these have  
6 available television and radio advertising, is that  
7 correct?

8 A They do, but not all of them make use of  
9 that, even though they could.

10 Q Which ones do not make use of television  
11 or radio advertising?

12 A For example, in the apparel industry, the  
13 apparel industry for selling clothing, for example,  
14 big advertising expenditures, but there are some  
15 lines of clothing that are only advertised in  
16 magazines, and only in certain magazines.

17 They would spend virtually none of their  
18 money on television advertising because, curiously,  
19 it speaks to what I just talked about before, which  
20 is, they're not interested in spending a lot of  
21 money to reach people who aren't going to buy their  
22 brands.

23 Q But with respect to the ones I listed just  
24 a moment ago, auto, computers, entertainment,  
25 household, cosmetics, all of those advertise heavily

A. WILLIAM ROBERTS, JR., & ASSOCIATES

63

1 on television, would you agree?

2 A No. There are some brands of cosmetics,  
3 for example, that do not advertise at all on  
4 television. So within the industries there are a  
5 lot of brands that compete very fiercely against one  
6 another, that none of them use television  
7 advertising or radio. Certainly not radio.

8 Q But as a sector, television advertising  
9 does not make up a substantial amount of the  
10 expenditures for cosmetics?

11 A Certainly in terms of the overall product  
12 category, sure, it does make up a substantial amount  
13 of the expenditures, no question about it.

14 Q Is television advertising generally  
15 speaking more expensive than print advertising?

16 A It would depend on a number of factors.  
17 All television advertising is not alike. If I  
18 advertise on network television, like NBC or CBS,  
19 for example, the time of the day at which the ad  
20 runs means it's going to be more or less expensive.  
21 If it's on in prime time, eight to 11 east coast,  
22 seven to ten central time, mountain time, it's going  
23 to be more expensive.

24 And it varies from show to show. The  
25 shows that do better in the ratings or get higher

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1 ratings, they're going to charge you more to  
2 advertise there. So you can pay \$3 million for a  
3 30-second spot on the Superbowl, or you could pay  
4 \$90,000 for a 30-second spot on a low rated network  
5 television show.

6 So there's a tremendous amount of  
7 variability in terms of what television advertising  
8 costs, depending on the level at which you choose to  
9 advertise. And again, you have variability with  
10 print ads.

11 Q Getting back to brand differentiation,  
12 your disclosure says this is one purpose of  
13 cigarette advertising. Is that correct?

14 A Yes, it is.

15 Q Based upon your review of cigarette  
16 advertising, and I saw a number in your reliance  
17 materials, in what ways are brands differentiated?

18 A They will be differentiated in terms of  
19 slogan, you know, a phrase that's always associated  
20 with a particular brand. They will be  
21 differentiated in terms of the style of advertising.

22 The way in which an ad is constructed,  
23 what's in it, if there are the same kind of themes  
24 that are repeated over time, in the course of a  
25 campaign, that would be something that would be a

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1 distinctive feature unique to a particular brand.

2 Q Are there other ways they are  
3 differentiated?

4 A No. You know, pretty much in terms of the  
5 visuals and the written, anything that's written in  
6 the ad.

7 Q Are they differentiated on the basis of  
8 appeal to one sex or the other?

9 A That would be true, for example, in terms  
10 of some brands of cigarettes. It would have a  
11 distinct appeal to females as opposed to males.

12 Q Can you give me an example of a few of  
13 those brands, please?

14 A Capri, Virginia Slims. Eve I think is  
15 another one.

16 Q Those are differentiated in favor of  
17 females, is that correct?

18 A Yes.

19 Q Are there ones that are differentiated in  
20 favor of males?

21 A That's a much harder call to make, because  
22 even some of the most popular brands among male  
23 smokers are also popular among female smokers. So  
24 it's hard to know in terms of the impact that the  
25 ads have on smokers as to whether or not even though

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1 the ads may feature predominantly or only males,  
2 that still may have some impact on and some effect  
3 on female smokers.

4 Q So no brand springs to mind as being  
5 differentiated as a male brand?

6 A And I'm looking at it now from the  
7 standpoint of males and females who smoke one  
8 particular brand or another.

9 Q That's correct.  
10 A Yes. There seem to be some brands that  
11 are almost exclusively female in terms of their  
12 preference. But there appear to be no brands that  
13 are like the mirror image that would be almost  
14 exclusively male. So apparently it works for those  
15 brands for females but not for males.  
16 Q Are you aware of brand differentiation on  
17 the basis of age appeal?  
18 A Again, pretty hard to say, based on  
19 looking at the ads themselves. And in terms of  
20 impact, I mean, certainly there's research to show  
21 that some brands are more popular among youth than  
22 among adult smokers. But they generally tend to  
23 also be among youth smokers the same brands that are  
24 also very popular among adult smokers.  
25 And again, that's not surprising, because  
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67

1 again, the industry is going after where it's  
2 getting most of its business, which clearly comes  
3 from adult smokers.  
4 Q Are you aware of any differentiation on  
5 the basis of lifestyle?  
6 A It would seem to me that there isn't  
7 really too much of that for at least the most  
8 heavily advertised brands. They all generally tend  
9 to use the same types of styles and techniques.  
10 Again, visuals in a different way, a little bit  
11 different orientation, but nothing that would say,  
12 if you're in this particular lifestyle, you know,  
13 this is the only brand or the unique brand for you,  
14 because, again, of the similarity from one brand to  
15 the next.  
16 Slogans of course might be different, and  
17 in fact are different in where the ads are. That's  
18 it.  
19 Q But slogans and placement, media placement  
20 do affect differentiation, is that a correct  
21 statement, a fair statement?  
22 A To the extent that you know something  
23 about your market and where you can best or most  
24 effectively reach them. Those would be the media  
25 vehicles that you would pick to run your ads, sure.  
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68

1 And all brands would engage in a similar situation.  
2 Q Stepping back then to the sex  
3 differentiation, are there brands that you see  
4 differentiated based upon their slogans or their  
5 media placement that are intended to appeal more to  
6 males than to females?  
7 A To males than females?  
8 Q Right.  
9 A None that really come to mind. Not among  
10 the more heavily advertised brands.  
11 Q How about with respect to age, are there  
12 brands that you're aware of that are based upon  
13 their slogan or their placement in the media that  
14 are intended to appeal to a younger smoker rather  
15 than an older smoker?  
16 A In terms of picking out some media that  
17 reach younger adult smokers, they might select that,

18 if that's that part of the adult smoking market that  
19 they're going after in terms of their placement,  
20 sure.

21 Q Are you aware of any specific brands that  
22 you've seen in magazines or what have you that have  
23 taken that approach?

24 A I don't have the opportunity to know like  
25 what -- for any given brand, like what their entire

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69

1 advertising schedule looks like. So I don't know  
2 what particular magazines they're running all their  
3 ads in across the entire spectrum and why they made  
4 the decision to advertise in that particular  
5 magazine. I mean, I don't know that.

6 So it would be limited to my looking at  
7 ads that appear in certain magazines that I'm  
8 familiar with. But I would not want to generalize  
9 at all in that regard, because I haven't -- again, I  
10 don't have the systematic information available to  
11 me.

12 Q Are you aware of any brands that are  
13 differentiated on the basis of your job or your  
14 employment, say if you're blue collar, white collar,  
15 that sort of differentiation?

16 A I know that in terms of advertising  
17 agencies and their plan to place ads in various  
18 media, that's part of the media plan that they come  
19 up with.

20 As much as they know about their  
21 customers, that is to say, those people who smoke  
22 their brand, as much as they know about those  
23 customers and as much as they can take that into  
24 account in selecting the particular media that  
25 they're going to run their ads in, they try to match

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70

1 that up as closely as they can on a number of  
2 different characteristics, again, based on whatever  
3 it is they've been able to learn about their  
4 customers.

5 And all advertisers do that.

6 Q How do the tobacco companies, if you know,  
7 how do they learn about their customers, who's  
8 buying which products?

9 A I don't know how they go about that.

10 Q How do other manufacturers learn about  
11 their customers? If you don't know how the tobacco  
12 industry does it, as a general rule how would  
13 someone go about finding out that information?

14 A What usually is involved is they would  
15 employ market research firms, or they use existing  
16 data collection sources, marketing research  
17 companies that sell subscriptions, like they sell  
18 newspaper subscriptions, except in this case they're  
19 pretty costly subscriptions, where they all go out  
20 and do a broad survey of people who read certain  
21 magazines and collect information on how old they  
22 are and other lifestyle as well as demographic  
23 factors.

24 And then they will be able to match that  
25 up with consumption levels in certain product

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1 categories. And then they sell that information in  
2 effect to advertisers.

3 Q Would you imagine such information exists,  
4 although you don't know about it, for cigarette  
5 consumption?

6 MR. McCONNELL: Objection to form. Calls  
7 for speculation. Lacks foundation. Go ahead.

8 THE WITNESS: I do not know for a fact  
9 what the tobacco industry uses for making these  
10 kinds of decisions. I know out there there are  
11 available for sale to subscribers that the tobacco  
12 industry may or may not subscribe to information on  
13 consumers, demographic and lifestyle indicators that  
14 matches up with their use of certain media vehicles,  
15 certain magazines, certain TV programs and that type  
16 of thing.

17 And that information is sold and is made  
18 available to various marketers for a variety of  
19 products and services. If you can pay the price,  
20 you can get it.

21 BY MR. BAKER:

22 Q In your expert opinion would you agree  
23 that not all communications by the tobacco companies  
24 with the public constitute advertising or promotion?

25 A I'm not sure what you would be thinking of  
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1 other than advertising and promotion that you would  
2 like me to comment on as to whether or not I think  
3 that's advertising or promotion or not.

4 Q How about public pronouncements concerning  
5 the health effects of its products, would those  
6 constitute advertising and promotion in your view?

7 A In my view that would depend upon how that  
8 information got there to be presented to the public.  
9 What's the vehicle?

10 Q Anything. It could be a press conference,  
11 it could be a page in the New York Times, it could  
12 be a press release.

13 A A page in the New York Times, if it's a  
14 paid advertisement, obviously, where the industry  
15 is -- or a particular company has said, we want to  
16 say this, we bought the ad space, like any other  
17 advertiser, and we paid for it, that's an ad, and  
18 it's labeled as a paid advertisement as well.

19 If they call a press conference and it's  
20 covered and reported in the news section of a  
21 newspaper, it's not paid advertising. It's a news  
22 story.

23 Q So would the ad in the New York Times be  
24 considered advertising and promotion of cigarettes  
25 if it concerned the health effects of tobacco?

A. WILLIAM ROBERTS, JR., & ASSOCIATES

1 MR. McCONNELL: Objection to form.

2 MR. BAKER: Let me rephrase that, then.

3 BY MR. BAKER:

4 Q Would you agree that an advertisement  
5 placed in the New York Times that deals exclusively  
6 with the health dangers of cigarettes constitutes  
7 advertising and promotion of cigarettes?

8 A It's not an ad in the sense that -- a

9 typical product and service ad for a particular  
10 brand that most consumers are familiar with. But if  
11 labeled as an ad, certainly consumers would respond  
12 to it like they would any other advertising message.

13 Q Do warnings, warning labels constitute  
14 advertising and promotion of cigarettes?

15 A No. In this particular case they don't,  
16 because they're mandated, and they're on all ads.  
17 Regardless of the way in which a particular ad is  
18 constructed, regardless of what the content of the  
19 ad is, they must contain the warning label. So it's  
20 like a standardized thing where people respond to it  
21 as being, this is an inclusion which is not a part  
22 of the ad even though it is a part of the ad, if you  
23 understand the distinction that I'm drawing.

24 Q How about if the tobacco company decided  
25 it wanted to add a separate new warning, for example

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74

1 "Cigarettes Are Addictive," that's not federally  
2 mandated? Would that constitute advertising and  
3 promotion of cigarettes?

4 A I'm not sure. And I would think -- no,  
5 I'm sure of this, that with the regulation and the  
6 close scrutiny to which cigarette advertising has  
7 been subjected to for many, many years and continues  
8 to be subjected to, that this would not be a  
9 decision that actually the industry could implement  
10 without some kind of prior approval and running it  
11 through in terms of regulation.

12 Again, if past history serves me  
13 correctly, I mean, the Federal Trade Commission has  
14 been very careful to monitor anything that the  
15 tobacco industry has done in terms of its  
16 advertising and promotional practices.

17 Q Does a product manufacturer's public  
18 pronouncements concerning the health effects of its  
19 products carry special weight with the public, in  
20 your opinion?

21 MR. McCONNELL: Objection to form.

22 THE WITNESS: I would have to, you know,  
23 take a look at a specific example and judge it in  
24 its context, you know, what part of the public is it  
25 being directed at, what is the content of that

A. WILLIAM ROBERTS, JR., & ASSOCIATES

75

1 message, how is it framed, meaning, you know, how is  
2 it presented and what kind of words are used to set  
3 up the message and explain the source of the message  
4 and the purpose of the message, et cetera.

5 I mean, I wouldn't really want to comment  
6 generally at all.

7 BY MR. BAKER:

8 Q Let's make it more specific. Would a  
9 cigarette company's public pronouncements concerning  
10 the health dangers of its products, i.e. "Cigarettes  
11 Cause Cancer," would that carry special weight with  
12 the public in your opinion?

13 MR. McCONNELL: Objection to form.

14 BY MR. BAKER:

15 Q As opposed to coming from the Surgeon  
16 General.

17 A I would suspect that, as opposed to coming

18 from the Surgeon General or from the public health  
19 community, I mean, those kinds of pronouncements  
20 would have far more impact on the public and various  
21 segments of the public more so than other segments  
22 of the public.

23 The public is not just an undifferentiated  
24 mass, in this particular case. If I'm a nonsmoker,  
25 never been a smoker, I probably couldn't care less

A. WILLIAM ROBERTS, JR., & ASSOCIATES

76

1 about any pronouncement, whether it came from the  
2 industry or it came from the Surgeon General. I'm  
3 already convinced that smoking is a health risk that  
4 I choose not to take. So...

5 Q Let's limit it to smokers, then. Would a  
6 pronouncement by the tobacco industry that its  
7 products cause one disease or another carry more  
8 weight than had that statement come from the Surgeon  
9 General?

10 MR. McCONNELL: Objection to form.

11 THE WITNESS: I would need to know what  
12 particular time frame, for starters.

13 BY MR. BAKER:

14 Q We'll start with the 1950s.

15 A Again, it would depend on the specific  
16 statement.

17 Q Okay. The specific statement would be,  
18 "Our Products Cause Lung Cancer."

19 MR. McCONNELL: I'm sorry. And the  
20 question is what?

21 BY MR. BAKER:

22 Q The question is, would the statement, "Our  
23 Products Cause Lung Cancer," coming from the tobacco  
24 industry, carry special weight with the smoking  
25 public?

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77

1 MR. McCONNELL: Objection to form. Vague.  
2 Calls for speculation.

3 THE WITNESS: Back in the 1950s?

4 BY MR. BAKER:

5 Q In the 1950s, I'm sorry.

6 A I would have no way of deciding that or no  
7 way of being able to answer that.

8 Q How about in the 1960s?

9 A Same thing would hold true.

10 Q 1970s?

11 A Same answer.

12 Q 1980s?

13 A Same answer.

14 Q 1990s?

15 A Same answer.

16 Q To your knowledge has the tobacco industry  
17 ever publicly acknowledged that its products cause  
18 lung cancer?

19 A I think it has been acknowledged by  
20 several of the tobacco companies, yes. I'm not sure  
21 if it's by everybody, or I'm not sure if there's  
22 been -- not that I'm familiar with, an industry-wide  
23 statement acknowledging it. But individual  
24 companies have acknowledged it, yes.

25 Q Would you agree that these

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1 acknowledgements have been fairly recent?

2 A Yes.

3 Q So let's go back into the 1990s. Would a  
4 statement that the tobacco companies, by one or more  
5 of the tobacco companies, that their products cause  
6 lung cancer, carry any special weight with the  
7 smoking public, in your expert opinion?

8 MR. McCONNELL: Objection, asked and  
9 answered. Objection to form.

10 THE WITNESS: Again, very difficult to  
11 tell. And very hard to speculate in this particular  
12 case. I would add the caveat, however, that since  
13 the public has long been aware of the health risks  
14 of smoking and its relation to various diseases,  
15 that information essentially would not be telling  
16 them anything that they don't already know or  
17 already claim to know.

18 And again, the public health community has  
19 done an effective job of communicating that, as well  
20 as other factors, where, you know, common knowledge  
21 that is communicated from one generation to the next  
22 and passed on from one person to the next about  
23 smoking's not good for you, smoking is bad for your  
24 health, already in the context where that  
25 information is very clear.

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1 BY MR. BAKER:

2 Q Let's take a different example, then. Are  
3 you familiar with the Tylenol recall back in I  
4 believe it was the 1980s?

5 A I certainly recall the incident, and the  
6 way in which Tylenol reacted, et cetera.

7 Q How did Tylenol react?

8 A If memory serves, what Tylenol did was it  
9 preserved -- I think to preserve their business and  
10 their brand with consumers, they instituted a  
11 massive recall to make sure that there were no  
12 contaminated Tylenol brands out there. And they did  
13 it on a much broader scale even than where the  
14 particularly defective Tylenol products on the shelf  
15 were found in the geographical area.

16 Q So Tylenol was an active participant in  
17 the recall, is that correct?

18 A Yes. Again, if memory serves.

19 Q Do you think that the fact that Tylenol  
20 was an active participant in making the public aware  
21 of the health dangers of its products at that point  
22 in time, that that had a special or enhanced impact  
23 on the users of Tylenol?

24 MR. McCONNELL: Objection to form.

25 THE WITNESS: A lot of different

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1 circumstances there that in a sense made the Tylenol  
2 situation unique. This was something obviously  
3 caused by some type of a disturbed individual who  
4 was contaminating Tylenol, and the company, not  
5 knowing if this was an act of a random individual or  
6 of a large number of individuals, having no  
7 knowledge of that, they felt like the best thing  
8 they could do under the circumstances was to do

9 exactly what they did.  
10 But again, you can't compare that to, what  
11 if they had done something else, would that have  
12 been more effective? Had they not done what they  
13 did, would that have been less effective? You don't  
14 have competing strategies that you can test out in  
15 kind of an experimental situation. Apparently what  
16 they did worked quite well for them. Tylenol is a  
17 brand that has not only survived but has done well.  
18 Cause and effect can't be proven in this  
19 particular case.  
20 Q Have tobacco industry pronouncements  
21 regarding the health effects of their products been  
22 credible in your opinion?  
23 A I would have to know what particular ones  
24 you're referring to.  
25 Q Their position that lung cancer causation  
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81

1 has not been proven.  
2 MR. McCONNELL: I object, lack of  
3 foundation as to time.  
4 BY MR. BAKER:  
5 Q In the 1980s.  
6 A As articulated where and in what forum,  
7 and with what language? I would have to look at  
8 that and then see if there was anything out there  
9 where any research had been done in terms of how  
10 people responded to it. Because if you're going to  
11 ask a question about effect, then we have to see  
12 where all the effect would manifest itself.  
13 Q Would you agree that in virtually every  
14 aspect of its business the tobacco industry suffers  
15 from a credibility problem?  
16 MR. McCONNELL: Objection to form.  
17 THE WITNESS: Too general, actually, I  
18 think, for me to respond to. Much too general, I  
19 think.  
20 BY MR. BAKER:  
21 Q What does the phrase "consumer perception  
22 or awareness" mean to you?  
23 A Consumer perception or awareness, consumer  
24 awareness? It could mean any number of different  
25 things, I imagine. But the thing that comes to my  
A. WILLIAM ROBERTS, JR., & ASSOCIATES

82

1 mind is that when, for example, a brand is  
2 presented, what I associate with that particular  
3 brand based on my past experience with that brand  
4 would constitute a consumer perception.  
5 Q What are some well-known marketing  
6 theories?  
7 MR. McCONNELL: Objection to form.  
8 BY MR. BAKER:  
9 Q Just give me a few schools of marketing  
10 theories.  
11 MR. McCONNELL: Same objection.  
12 THE WITNESS: Supply and demand. Price  
13 elasticity. Brand preference elasticity.  
14 BY MR. BAKER:  
15 Q Fair enough. What are some major theories  
16 of consumer or buyer behavior?  
17 MR. McCONNELL: Same objection.

18 THE WITNESS: Well, a good one that comes  
19 to mind is called the evoked set, sometimes  
20 called -- evoked, E-V-O-K-E-D, set, S-E-T, sometimes  
21 better known as top of mind, top of mind awareness.  
22 BY MR. BAKER:

23 Q What is that?

24 A In brief, it's a theory that says that for  
25 most heavily consumed products and services in

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83

1 categories, consumers have a relatively narrow  
2 restricted list of brands that they would consider  
3 at the time of purchase. So, for example, if I'm  
4 going to buy -- if I need laundry detergent --

5 Q Let's use cigarettes as the example.

6 A Okay. Cigarettes, again, in that  
7 category, I need a pack of cigarettes, I go to the  
8 convenience store to buy a pack of cigarettes. The  
9 number of brands that I would consider would be  
10 usually no more than three, and sometimes as few as  
11 one. But it is a limited set.

12 And with cigarettes, there could be more  
13 than -- you know, there's probably more than 300  
14 brands available on the market at any one point,  
15 maybe not at my convenience store, but there's  
16 certainly going to be a wide number of brands. But  
17 the acceptable brands that fall into my evoked set  
18 will be a relatively small number.

19 Q And a purpose of cigarette tobacco,  
20 cigarette advertising promotion is to play into that  
21 evoked set?

22 MR. McCONNELL: Objection to form. You  
23 can answer.

24 THE WITNESS: One of the objectives would  
25 certainly be to make your brand in smokers' evoked

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84

1 set, yes. That's what brand competition, the  
2 essence of it is all about.

3 BY MR. BAKER:

4 Q Are there other major theories that are  
5 out there?

6 A There would be other theories that would  
7 relate to the consumer behavior with regard to new  
8 products. This would be called -- it's called the  
9 theory of innovation. It briefly looks at who are  
10 the first people in a product category to begin  
11 buying a new product, who's next, and then who kind  
12 of ends up on the tail end of the process.

13 Q How would that theory play in with, say,  
14 the new Eclipse cigarette?

15 MR. McCONNELL: Objection to form.

16 THE WITNESS: In this particular case, as  
17 a new brand, sometimes new brands are not the same  
18 as a new product. But again, for a new brand trying  
19 to break into the marketplace, the concern would be  
20 who is experimenting or trying this particularly new  
21 brand, who are these people and what do we know  
22 about these people.

23 And more importantly, you would want to  
24 know how satisfied they are with it. They buy it  
25 one time, are they going to make a repeat purchase,

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1 or are they going to go away from it. And then if  
 2 they go away from it, why, what was unsatisfactory  
 3 about the experience with the new brand that  
 4 prompted them not to repurchase.

5 BY MR. BAKER:

6 Q What does the phrase "marketing mix" mean?

7 A "Marketing mix" refers to, when I have a  
 8 brand of a product or service that I am trying to  
 9 get out there, communicate with my customers,  
 10 marketing mix recognizes the fact that I can reach  
 11 the customer through a number of different ways.

12 And again, the caveat that I would remind  
 13 you of is that this is kind of an inefficient way to  
 14 do this, ideally I would like to be able to talk to  
 15 each one of my customers individually and engage in  
 16 an individual process of communicating. I can't do  
 17 that, because I can't afford to do that.

18 So what I do is I find out who my  
 19 customers are, learn as much as possible as I can  
 20 about them, and then what I do is I pick those media  
 21 vehicles that I think are going to give me the best  
 22 chance at getting exposure for my advertising and  
 23 promotional messages. And obviously it just gives  
 24 me a chance. It doesn't give me a guarantee that  
 25 when my ad appears in this magazine, that somebody

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1 is actually going to look at it.

2 But, knowing what I know about the  
 3 readership of that magazine, at least I've got a  
 4 shot at it, if my ad is well constructed, et cetera,  
 5 that some of the customers in my product category  
 6 from my brand will be exposed to the ad, and that  
 7 they will actually read it and respond, and  
 8 hopefully in certainly desirable ways.

9 So the media mix refers to the different  
 10 ways of getting --

11 Q I'm sorry. Marketing mix?

12 A The marketing mix, okay. Yes. And again,  
 13 marketing would be even broader than media, because  
 14 there would be different channels other than simply  
 15 using different media. So, for example, like point  
 16 of purchase would be an example of something else  
 17 that's non-media specific, like using magazines or  
 18 newspapers, for example.

19 Q What are some of the traditional models  
 20 that have been developed to depict the stages that a  
 21 consumer might pass through in moving from a state  
 22 of not being aware of a product into a state of  
 23 actually buying the product?

24 A Yes, the most traditional one was a model  
 25 developed by two researchers called Lavidge and

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1 Steiner, L-A-V-I-D-G-E, S-T-E-I-N-E-R, and it's a --  
 2 it's a model which essentially starts with -- it's  
 3 kind of a common sense model.

4 It says you move somebody to actually  
 5 trying your brand through a process which begins  
 6 with awareness and then moves to a stage or attitude  
 7 of liking the particular product or brand, and  
 8 then -- and that in turn is influenced by your

9 beliefs about the attributes of what the product or  
10 brand actually does. And that in turn leads to an  
11 intention to purchase or at least look into it. And  
12 then at the top of the list of course is the actual  
13 purchasing behavior.

14 But I would point out that in the research  
15 that has looked at critically and summarized whether  
16 or not these particular types of models, this  
17 rational model of consumer behavior, as to whether  
18 or not there's any evidence that that's how  
19 advertising helps move people along that hierarchy,  
20 the evidence suggests that the model rarely if ever  
21 works, that there could be all kinds of short  
22 circuits and ways in which consumers either don't  
23 follow all the steps, or go from one step  
24 immediately to the final step, or seemingly just on  
25 impulse go to the final step without any of the --

A. WILLIAM ROBERTS, JR., & ASSOCIATES

88

1 very much at all in the preceding stages.

2 Q Can these short circuits be generalized,  
3 or are they consumer specific?

4 A Apparently consumer specific.

5 Q So you can't make any generalization  
6 about, say, the cigarette segment, as to how this  
7 process may be short-circuited, more commonly in  
8 this way as opposed to that way?

9 A I would have no knowledge of that.

10 Q Here's a good question. What's the  
11 difference between an undifferentiated strategy  
12 versus a differentiated or concentrated strategy in  
13 marketing?

14 A Sure. Undifferentiated strategy is -- for  
15 lack of a more scientific phrase, is throw it up  
16 against the wall and see what sticks.  
17 Differentiated approach would be, find out as much  
18 as you can that's going to help you become more  
19 efficient in terms of how you allocate your  
20 advertising dollars, for example, or any of the  
21 marketing dollars that you're spending in your total  
22 marketing effort in an attempt to contribute to more  
23 sales of your product or service.

24 Q Based upon what you've witnessed of  
25 cigarette advertising and promotion, is it more

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89

1 undifferentiated or differentiated?

2 A It would be very difficult to say. It  
3 would be very difficult for me to properly position  
4 it according to those two terms.

5 Q Is there another term that I'm missing in  
6 there?

7 A I guess what my point would be is, there  
8 clearly are degrees of differentiation that  
9 different marketers use. Some are happier with a  
10 more undifferentiated but still some  
11 differentiation, and some can be very, very  
12 specific.

13 And I don't mean that to be -- I know that  
14 it probably does sound funny, but there is truth to  
15 what I'm saying, because some advertisers are  
16 privileged because they deal with a very select  
17 clientele.

18 Q Let's deal with cigarettes here.  
19 A Okay. Right. And on this continuum,  
20 cigarettes would be much further up the ladder  
21 toward undifferentiated, because you have smokers  
22 cutting across such a wide spectrum that your  
23 ability to really be specific and hone in is really  
24 limited, even if you wanted to do that.  
25 Q What is an index number, what does that  
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90

1 phrase mean in the marketing industry?  
2 A The index numbers that I'm familiar with,  
3 I mean, they're used in a variety of different  
4 contexts, but the most familiar index number that  
5 I'm familiar with is, for example, in some marketing  
6 research reports, they will give an index number for  
7 product category usage by readership of a given  
8 magazine, and they usually index against a common  
9 number, which is 100, and 100 is a common index  
10 number because that's average.  
11 And then any number for a particular entry  
12 that's above 100 or below 100 would index higher or  
13 lower for people in that category.  
14 Q And a higher number would be more people  
15 in that group used the product?  
16 A That's right. That's right. Or read that  
17 particular magazine.  
18 Q Would you agree that you can develop a  
19 degree of expertise in marketing and advertising and  
20 consumer behavior and consumer communication without  
21 actually knowing all of these analytical terms that  
22 I just went through?  
23 A At some point you would have to  
24 familiarize yourself at least with the way in which  
25 those terms or processes or concepts operate. You  
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91

1 may not know them by that specific label, but that  
2 certainly wouldn't be -- you know, that in and of  
3 itself would not qualify you as an expert.  
4 Q Simply because you can't explain the  
5 meaning of each and every of those terms doesn't  
6 mean you don't have some sort of expertise in  
7 advertising or marketing, would you agree with that?  
8 MR. McCONNELL: I object to the extent the  
9 question calls for a legal conclusion.  
10 THE WITNESS: Some sort of expertise. I  
11 mean, anybody could have some level of expertise. I  
12 mean, for example, I think of people who are big  
13 fans of astronomy, they have a telescope and they  
14 look at the stars and they chart the movement of the  
15 stars. They have some expertise in astronomy.  
16 But if you ask any astronomer who is  
17 trained as an astronomer whether or not these people  
18 are astronomers, they're going to go, "I don't think  
19 so."  
20 BY MR. BAKER:  
21 Q Are you familiar with the recent  
22 television advertising campaign by Philip Morris  
23 concerning the master settlement agreement?  
24 A I've seen some of the ads, yes, on TV.  
25 Yes.

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1 MR. BAKER: Let's mark this as number 3.  
 2 (Meyer Exhibit 3 was identified.)  
 3 MR. McCONNELL: When we can, when you get  
 4 to the logical break, could we take a brief break?  
 5 MR. KLEIN: Tell us the nature of the  
 6 relevance of this line of inquiry into the MSA.  
 7 MR. BAKER: It goes to marketing.  
 8 MR. KLEIN: With respect to a class that  
 9 ended in 1995, membership ended in 1995?  
 10 MR. BAKER: Are you objecting to the  
 11 relevancy of this line?  
 12 MR. KLEIN: Yes, I'm objecting to the  
 13 relevancy. I'm asking you to state on the record  
 14 what the relevancy is.  
 15 MR. BAKER: It goes to the advertising and  
 16 promotion.  
 17 MR. KLEIN: Of what?  
 18 MR. BAKER: Of cigarettes.  
 19 MR. KLEIN: And how does that impact your  
 20 class?  
 21 MR. BAKER: We'll find out.  
 22 MR. KLEIN: That ended in 1995?  
 23 MR. McCONNELL: We'll take a break.  
 24 (Recess.)  
 25 MR. BAKER: Just for the record, one area  
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1 of relevance that I see in this, without limitation,  
 2 is that this ad indicates that Philip Morris is  
 3 changing the manner in which it advertises and  
 4 promotes cigarettes, which is relevant carrying back  
 5 to the way it previously advertised and marketed its  
 6 products. That's just one area, and I'm sure there  
 7 are others.  
 8 MR. McCONNELL: I take it you will not  
 9 accept our silence as acquiescence.  
 10 MR. BAKER: I just wanted to make a  
 11 statement, since I was asked, and I had a moment to  
 12 reflect upon it.  
 13 BY MR. BAKER:  
 14 Q Have you had a chance to review this?  
 15 A I have, yes.  
 16 Q And have you asked any of the tobacco  
 17 companies for information concerning this  
 18 advertising campaign?  
 19 A No, I have not.  
 20 Q What, based upon your review of this, and  
 21 based upon your expertise as a professor that dwells  
 22 on these matters, what is the purpose of this  
 23 advertising campaign?  
 24 A I think you would have to ask Philip  
 25 Morris. I mean, I wasn't involved in the planning  
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1 of it. I have no knowledge of who came up with the  
 2 idea or what their objectives were, this type of  
 3 thing. I have no knowledge of that whatsoever.  
 4 Q You've seen this advertising campaign on  
 5 TV, is that correct?  
 6 A Yes, I have.  
 7 Q Based upon seeing it, do you have any  
 8 idea, can you formulate an opinion as to whom this

9 advertising campaign is directed to?  
10 MR. McCONNELL: Objection to form.  
11 THE WITNESS: I don't know enough about  
12 what media channels they've used, how often the  
13 spot's running, or again, what went into their  
14 planning in terms of the media vehicles that they  
15 pick. So message construction, why are they doing  
16 this, why did they construct the message the way  
17 they did, to say the things that they're saying,  
18 and, you know, how are they getting it out to  
19 whatever part of the audience, who is in the target  
20 audience, I don't know that.  
21 BY MR. BAKER:  
22 Q Based upon what you have seen, does it  
23 appear to be an undifferentiated media strategy or a  
24 differentiated media strategy?  
25 MR. McCONNELL: Objection to form.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

95

1 THE WITNESS: Again, I don't know -- I've  
2 seen it on -- in fact I can't even recall the  
3 different types of programs that I've seen it on. I  
4 know I've seen it in prime time. That is where I  
5 can recall having seen it several times. And the  
6 only valid inference I can make from that is, you  
7 advertise in prime time because in prime time for  
8 television, that's when you have more people as  
9 opposed to less people watching TV. So...  
10 BY MR. BAKER:

11 Q And that would go to impact, is that  
12 correct? Based upon what you've seen, having seen  
13 this in prime time, it would impact a wider audience  
14 as opposed to a more narrow audience?

15 MR. McCONNELL: Objection to form.

16 THE WITNESS: No, again, what I had said  
17 earlier, when you pick a particular media vehicle,  
18 in this case, this was run on the NFL, on Fox, okay,  
19 they picked a network and a type of program.

20 What they're doing here is -- and all they  
21 get for this is an opportunity. And we know from  
22 the way in which consumers behave, when a television  
23 ad comes on or a television commercial comes on,  
24 sometimes they look at it, sometimes they don't,  
25 sometimes they're not in the room, sometimes they're

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96

1 in the room and they're not looking at it.  
2 Sometimes they pay attention to part of it,  
3 sometimes all of it.

4 And it varies a great deal. But it gives  
5 you an opportunity for exposure. But there's no  
6 guarantee of impact.

7 Q Let's look at the storyboard itself. On  
8 the second row it says, "No more tobacco company  
9 billboards." In your expert opinion, what is the  
10 significance to Philip Morris advertising and  
11 promotion that there are no more company billboards?

12 MR. McCONNELL: Objection to form.

13 THE WITNESS: What this says to me here is  
14 that as a part of the agreement, one of the things  
15 Philip Morris said they would do is to no longer  
16 advertise on billboards, no more outdoor  
17 advertising. And that's what they've done in

18 compliance with the agreement.  
19 BY MR. BAKER:  
20 Q What kind of effect do you believe that no  
21 more tobacco company billboards will have on Philip  
22 Morris's ability to reach smokers with messages  
23 about its products?  
24 MR. McCONNELL: Objection to form.  
25 THE WITNESS: Well, what it does, the only  
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97

1 thing we can be sure of is obviously factually it  
2 removes a media vehicle that Philip Morris had  
3 relied on in the past to gain exposure to reaching  
4 their customers. That's no longer available to  
5 them. The impact that it has depends on what other  
6 channels or strategies they employ to continue to  
7 reach their customers, and if there are any  
8 alternatives.  
9 And I don't know what if any plans they  
10 have. Again, I'm not privileged to that either.  
11 BY MR. BAKER:  
12 Q Generally speak, are billboards a more or  
13 less differentiated medium for advertising a  
14 product, say, on a highway as opposed to a football  
15 stadium or something?  
16 A Yes, on a highway, I think billboards  
17 clearly speak to actually one of the marketing  
18 concepts I referred to earlier, the reminder of the  
19 evoked set. You can do very, very limited things  
20 with any billboard, just by virtue of the context in  
21 which consumers engage a billboard.  
22 If you're driving by at a fairly high rate  
23 of speed or you're a kid that's in the back seat of  
24 the car with limited visibility to begin with, you  
25 may not even notice the billboard. So when you use  
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98

1 the billboard for exposure, you get across a very  
2 limited message at best.  
3 Q Let's look at the next frame, then. "No  
4 more tobacco logos on clothing or merchandise."  
5 What role do clothing or merchandise with logos have  
6 in advertising and promotion? What is their highest  
7 and best use?  
8 MR. McCONNELL: Objection to form.  
9 THE WITNESS: It is actually a way of  
10 communicating directly between the company and its  
11 customers. And it's a way by which customers of  
12 that particular brand can make others aware of the  
13 fact that that is their particular brand. It is a  
14 way also of encouraging and preserving your customer  
15 loyalty and your customer base.  
16 And it's a way by which the company can  
17 share this information and form this bond between  
18 themselves and customers.  
19 BY MR. BAKER:  
20 Q So between brand switching, brand  
21 differentiation, and brand loyalty, it probably  
22 factors highest towards brand loyalty, is that a  
23 correct assumption?  
24 A That's correct. And it probably has  
25 little if anything at all to do with brand  
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1 switching.  
 2 MR. BAKER: I have no more questions.  
 3 MR. McCONNELL: We don't have any  
 4 questions. Does anybody on the phone have any  
 5 questions?  
 6 MR. McHUGH: No.  
 7 (Whereupon, at 12:40 p.m., the deposition  
 8 was concluded.)  
 9

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100

1 I HEREBY CERTIFY that I have read this  
 2 transcript of my deposition and that this transcript  
 3 accurately states the testimony given by me, with  
 4 the changes or corrections, if any, as noted.  
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Subscribed and sworn to before me this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_.

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 Notary Public

My commission expires: \_\_\_\_\_.

A. WILLIAM ROBERTS, JR., & ASSOCIATES

101

1	C O N T E N T S	
2	WITNESS	EXAMINATION
3	TIMOTHY P. MEYER, Ph.D.	
4	by Mr. Baker	5
5		
6	E X H I B I T S	
7	MEYER EXHIBIT NUMBER	IDENTIFIED
8	Exhibit 1 August 31, 2000 letter	18

9	Exhibit 2	Disclosure and Curriculum	21
10		Vitae	
11	Exhibit 3	Advertisement	92
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A. WILLIAM ROBERTS, JR., & ASSOCIATES

102

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC  
2 I, Lee A. Bursten, Registered  
3 Professional Reporter, the officer before whom the  
4 foregoing proceedings were taken, do hereby certify  
5 that the foregoing transcript is a true and correct  
6 record of the proceedings; that said proceedings  
7 were taken by me stenographically and thereafter  
8 reduced to typewriting under my supervision; and  
9 that I am neither counsel for, related to, nor  
10 employed by any of the parties to this case and have  
11 no interest, financial or otherwise, in its outcome.

12  
13  
14  
15 NOTARY PUBLIC IN AND FOR THE  
16 DISTRICT OF COLUMBIA

17  
18 My commission expires:  
19 November 14, 2000

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22  
23  
24  
A. WILLIAM ROBERTS, JR., & ASSOCIATES